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10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against,

Case No. 800-2017-036988

15 **JOSEPH C. HEFFERNAN, M.D.**
16 **2628 El Camino Ave. Ste. A8**
17 **Sacramento, CA 95821**
18 **Physician's and Surgeon's Certificate No. G**
19 **24420**

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

Respondent.

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21 **FINDINGS OF FACT**

22 1. On or about February 15, 2019, Complainant Kimberly Kirchmeyer, in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs, filed Accusation No. 800-2017-036988 against Joseph C. Heffernan, M.D. (Respondent)
25 before the Medical Board of California.

26 2. On or about May 15, 1973, the Medical Board of California (Board) issued
27 Physician's and Surgeon's Certificate No. G 24420 to Respondent. The Physician's and
28 Surgeon's Certificate expired on March 31, 2018, and has not been renewed. A copy of the

1 Certificate of Licensure is attached to this Default Decision and Order as Exhibit A, and is
2 incorporated by reference herein.

3 3. On or about February 15, 2019, Kristy Voong, an employee of the Complainant
4 Agency, served by U.S. Certified Mail a copy of the Accusation No. 800-2017-036988, Statement
5 to Respondent, Notice of Defense, Request for Discovery, and Government Code sections
6 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and
7 is: 2628 El Camino Ave. Ste. A8, Sacramento, CA 95821. A copy of the Accusation, the related
8 documents, and Declaration of Service are attached as Exhibit B, and are incorporated herein by
9 reference.

10 4. On or about March 8, 2019, the aforementioned documents were returned by the U.S.
11 Postal Service marked "Return to Sender, Attempted, Not Known, Unable to Forward." A copy
12 of the envelope returned by the post office is attached as Exhibit C, and is incorporated herein by
13 reference.

14 5. On or about April 4, 2019, Complainant's Counsel sent a Courtesy Notice to
15 Respondent informing him that if he does not take immediate action, his license will be revoked
16 by default.

17 6. On or about April 4, 2019, Analyst Kristy Voong researched additional possible
18 addresses for Respondent, other than his address of record. She located two possible address for
19 Respondent at 3625 Mission Ae, Ste.D, Carmichael, CA 95608, and 3024 Eastern Ave,
20 Sacramento, CA 95821, and sent a copy of the Accusation and related documents to these
21 addresses by certified mail. On or about April 8, 2019, Ms. Voong received back the Postal Form
22 for the documents mailed to the Eastern Avenue address. It showed that an individual accepted
23 receipt of the mail on April 6, 2019. The printed name for the box showing the recipient appears
24 to be the name "Heffernan." A copy of proof of service for the two additional mailings, and the
25 corresponding postal cards are attached as Exhibit D, and are incorporated herein by reference. A
26 copy of the postal card showing receipt at the Eastern Avenue address is attached as exhibit E,
27 and is incorporated herein by reference. To date, Respondent has not filed a notice of defense.
28

7. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

JURISDICTION

8. Section 822 of the Code states:

“If a licensing agency determines that its licentiate’s ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

“(a) Revoking the licentiate’s certificate or license.

“(b) Suspending the licentiate’s right to practice.

“(c) Placing the licentiate on probation.

“(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

“The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person’s right to practice his or her profession may be safely reinstated.”

9. Business and Professions Code section 118 states, in pertinent part:

“(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground.”

10. Government Code section 11506 states, in pertinent part:

“(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation

1 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
2 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

3 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
4 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-
5 2017-036988.

6 11. California Government Code section 11520 states, in pertinent part:

7 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
8 agency may take action based upon the respondent's express admissions or upon other evidence
9 and affidavits may be used as evidence without any notice to respondent."

10 DETERMINATION OF ISSUES

11 1. Based on the foregoing findings of fact, Respondent Joseph C. Heffernan, M.D. has
12 subjected his Physician's and Surgeon's Certificate No. G 24420 to discipline.

13 2. A copy of the Accusation and the related documents and Declaration of Service are
14 attached.

15 3. The agency has jurisdiction to adjudicate this case by default.

16 4. The Medical Board of California is authorized to revoke Respondent's Physician's
17 and Surgeon's Certificate based upon the grounds for discipline alleged in the Accusation,
18 specifically, that Respondent suffers from a mental or physical illness that prevents him from
19 safely practicing medicine, pursuant to Business and Professions Code section 822.

20 5 Pursuant to its authority under Government Code section 11520, and the evidence
21 contained in Exhibits A, B, C, D, and E, the Board finds Respondent is in default. The Board will
22 take action without further hearing and,

23 6. Pursuant to Respondent's express admissions by way of default, and the evidence
24 contained in the separate accompanying "Default Decision Evidence Packet," the Board finds that
25 the allegations in Accusation No. 800-2017-036988 are true.

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ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 24420, heretofore issued to Respondent Joseph C. Heffernan, M.D., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 7, 2019, at 5:00 p.m.

It is so ORDERED July 8, 2019.



FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
KIMBERLY KIRCHMEYER
EXECUTIVE DIRECTOR

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 15 20 19
BY K. Voong ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
12 DEPARTMENT OF CONSUMER AFFAIRS
13 STATE OF CALIFORNIA

14 In the Matter of the Accusation Against:

Case No. 800-2017-036988

15 **Joseph C. Heffernan, M.D.**
16 **2628 El Camino Ave., Ste. A8**
17 **Sacramento, CA 95821**

ACCUSATION

18 **Physician's and Surgeon's Certificate**
19 **No. G 24420,**

Respondent.

20
21 Complainant alleges:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
24 capacity as the Executive Director of the Medical Board of California, Department of Consumer
25 Affairs (Board).

26 2. On or about May 15, 1973, the Medical Board issued Physician's and Surgeon's
27 Certificate Number G 24420 to Joseph C. Heffernan, M.D. (Respondent). The Physician's and
28 Surgeon's Certificate expired on March 31, 2018, and has not been renewed. On January 18,

1 2019, a noticed hearing was held on the Board's petition for an interim order of suspension of
2 Respondent's Physician's and Surgeon's certificate. By written order signed January 23, 2019,
3 the petition was granted and Respondent's Physician's and Surgeon's Certificate was suspended
4 until an accusation is issued, and a decision rendered, or the matter is otherwise resolved.

5 JURISDICTION

6 3. This Accusation is brought before the Board, under the authority of the following
7 laws. All section references are to the Business and Professions Code unless otherwise indicated.

8 4. Section 118, subdivision (b), of the Code provides that the expiration of a license
9 shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action
10 during the period within which the license may be renewed, restored, reissued or reinstated.

11 5. Section 2227 of the Code provides that a licensee who is found guilty under the
12 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
13 one year, placed on probation and required to pay the costs of probation monitoring, or such other
14 action taken in relation to discipline as the Board deems proper.

15 6. Section 820 of the Code states:

16 "Whenever it appears that any person holding a license, certificate or permit under this
17 division or under any initiative act referred to in this division may be unable to practice his or her
18 profession safely because the licentiate's ability to practice is impaired due to mental illness, or
19 physical illness affecting competency, the licensing agency may order the licentiate to be
20 examined by one or more physicians and surgeons or psychologists designated by the agency.
21 The report of the examiners shall be made available to the licentiate and may be received as direct
22 evidence in proceedings conducted pursuant to Section 822."

23 7. Section 822 of the Code states:

24 "If a licensing agency determines that its licentiate's ability to practice his or her profession
25 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the
26 licensing agency may take action by any one of the following methods:

27 "(a) Revoking the licentiate's certificate or license.

28 "(b) Suspending the licentiate's right to practice.

1 “(c) Placing the licentiate on probation.

2 “(d) Taking such other action in relation to the licentiate as the licensing agency in its
3 discretion deems proper.

4 “The licensing section shall not reinstate a revoked or suspended certificate or license until
5 it has received competent evidence of the absence or control of the condition which caused its
6 action and until it is satisfied that with due regard for the public health and safety the person’s
7 right to practice his or her profession may be safely reinstated.”

8 **CAUSE FOR ACTION**

9 **(Mental or Physical Impairment)**

10 8. Respondent’s license is subject to action under section 822 in that he is not safe to
11 practice medicine safely as he suffers from a mental illness that affects his competency to practice
12 medicine. The circumstances are as follows:

13 9. On or about September 22, 2017, a psychiatrist with the VA Medical Center in
14 Sacramento telephoned the Board to report that Respondent had failed cognitive testing,
15 indicating he suffered from dementia. The psychiatrist reported that Respondent had indicated
16 that he currently worked in a “pill mill” in Carmichael under other doctors’ names, but is
17 homeless and living at a hotel. The complaining psychiatrist indicated that she had also notified
18 Adult Protective Services about Respondent’s situation.

19 10. On November 28, 2017, an Investigator working on behalf of the Board went to a
20 clinic address in Carmichael where Respondent indicated he was working and spoke with him.
21 Respondent told the Investigator that Dr. R.C. had allowed him to work in his practice, but that he
22 had not seen patients in the last six weeks or so. He stated that his role in the practice was to
23 discuss patient care with the doctor, like an assistant. Respondent was unable to state the day of
24 the week or month, or to provide an address where he was living. He indicated that he was
25 staying at a house nearby, but that his money would run out in two weeks and he would be
26 homeless. He could not recall the address of the house he was staying at nearby. He
27 acknowledged to the Investigator that he had been having memory problems, but he stated that he
28 believed he was safe to practice medicine.

11. The Investigator obtained Respondent's medical records from the VA Medical Center in Sacramento, and provided them to the Sacramento Field Office Medical Consultant, who opined Respondent required mandatory testing in order to determine whether he is safe to continue practicing medicine

12. On or about August 14, 2018, the Board issued an order compelling Respondent to undergo a mental and physical examination under Business and Professions Code 820. On or about October 10, 2018, Respondent submitted to the examination, and was examined by Dr. F.L., a Board-certified neurologist. Dr. F.L. reviewed a copy of the complaint from the VA psychiatrist, a draft of the investigation report by the Investigator, and a copy of Respondent's medical records from the VA between November of 2001 through November of 2017. Dr. F.L. interviewed Respondent and conducted physical and cognitive examinations, for approximately two-and-a-half hours.

13. Based his review of the relevant materials, as well as his examination and interview with Respondent, Dr. F.L. concluded that Respondent suffers from at least mild, to moderately severe dementia. In addition to performing testing on Respondent that shows he suffers from general cognitive impairment, Dr. F.L. asked specific questions of Respondent relating to medical knowledge and experience. Respondent was unable to provide correct answers to basic questions such as the differential diagnosis for chest pain or abdominal pain. Dr. F.L. concluded that Respondent is not medically fit to carry out the duties of a licensed physician and surgeon. Consequently, he concluded that Respondent suffers from a mental condition that substantially impairs his ability to safely practice medicine.

DISCIPLINARY CONSIDERATIONS

14. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about May 23, 1991, in a prior disciplinary action entitled, "In the Matter of the Accusation Against Joseph C. Heffernan, M.D." before the Medical Board of California, in Case No. D-4417, Respondent's license was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a

1 period of five years with certain terms and conditions. That decision is now final and is
2 incorporated by reference as if fully set forth herein.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Medical Board of California issue a decision:

6 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 24420,
7 issued to Joseph C. Heffernan, M.D.;


8 2. Revoking, suspending or denying approval of Joseph C. Heffernan, M.D.'s authority
9 to supervise physician assistants and advanced practice nurses;

10 3. Ordering Joseph C. Heffernan, M.D., if placed on probation, to pay the Board the
11 costs of probation monitoring;

12 4. Taking such action as authorized by section 822 of the Code as the Medical Board, in
13 its discretion, deems necessary and proper; and

14 5. Taking such other and further action as deemed necessary and proper.

15
16 DATED: February 15, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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